

**WRITTEN TESTIMONY OF ROBERT M. LANGER, WIGGIN AND DANA LLP
ON BEHALF OF
THE ANTITRUST & TRADE REGULATION SECTION OF THE
CONNECTICUT BAR ASSOCIATION
RE: RAISED BILL NO. 5463
“AN ACT CONCERNING THE AUTHORITY OF THE OFFICE OF THE ATTORNEY
GENERAL TO BRING AN ACTION AGAINST A SELLER WHO ENGAGES IN PRICE
GOUGING DURING A DISASTER OR EMERGENCY”
BEFORE THE JOINT COMMITTEE ON JUDICIARY
MARCH 18, 2022**

Dear Co-Chairs Winfield and Stafstrom, and Members of the Joint Committee on Judiciary:

My name is Robert M. Langer. I am Senior Counsel in the Hartford Office of the law firm, Wiggin and Dana LLP, and I submit this written testimony solely in my capacity as the current Chair of the Antitrust & Trade Regulation Section of the Connecticut Bar Association in partial support and in partial opposition to Raised Bill No. 5463. By way of brief background, I am the former Assistant Attorney General who headed the Antitrust & Consumer Protection Department in the Connecticut Attorney General’s Office for most of my career in public service between 1973 and 1994. During that time, I was involved with various iterations of Connecticut’s price gouging law. I have also taught unfair trade practice law, among other areas of law, as an adjunct professor for over 40 years, at UConn Law School (2014-present), the UConn School of Business Administration MBA Program (1979-2013), and at the Quinnipiac University School of Law (2021-present). Finally, I am the co-author of the leading treatise on the Connecticut Unfair Trade Practices Act, R. Langer, J. Morgan and D. Belt, CONNECTICUT UNFAIR TRADE PRACTICES, BUSINESS TORTS AND ANTITRUST, Volume 12, Connecticut Practice Series, 2021-22 edition (Thomson Reuters). A new edition of the treatise is published yearly.

A. Our Section opposes Section 1 of the bill as currently drafted. Section 1 proposes to amend the Connecticut price gouging law – Conn. Gen. Stat. § 42-230 – by adding the language, “The Attorney General shall have exclusive authority on behalf of the state of Connecticut to enforce any violation of the provisions of this section.” [Emphasis supplied].

Importantly, the current portion of Conn. Gen. Stat. § 42-230, which the bill does not seek to amend, states, “Any violation of the provisions of this section shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b.” Conn. Gen. Stat. § 42-110b(a) is the substantive provision of the Connecticut Unfair Trade Practices Act (“CUTPA”). We suggest that Section 1 of the bill be clarified in two distinct ways.

First, Section 1 should be clarified regarding whether the amendment is or is not intended to foreclose private CUTPA suits for price gouging claims. CUTPA authorizes private rights of action pursuant to Conn. Gen. Stat. § 42-110g(a). Importantly, CUTPA’s private right of action under the aforesaid section authorizes persons who have suffered an ascertainable loss of money or property to request the court to award both compensatory damages and injunctive relief, and in appropriate instances, punitive

damages. Additionally, reasonable attorney's fees may be awarded pursuant to Conn. Gen. Stat. § 42-110g(d), and, pursuant to Conn. Gen. Stat. § 42-110g(b), CUTPA also authorizes private litigants to bring class actions in appropriate circumstances.

Second, Section 1 should be clarified regarding whether the aforesaid "exclusive authority" language is intended to completely foreclose investigative and enforcement activities by the principal administrator of CUTPA, the Connecticut Commissioner of Consumer Protection. *See, e.g.*, Conn. Gen. Stat. § 42-110b(c) – Regulation-making authority; Conn. Gen. Stat. § 42-110(a)-(f) and Conn. Gen. Stat. § 42-110n – Both investigative and enforcement authority, including restitution; Conn. Gen. Stat. § 42-110k – Enforcement authority should a person fail to obey a subpoena issued by the Commissioner; Conn. Gen. Stat. § 42-110m(a) - Authorizing the Attorney General to file suit in Superior Court under CUTPA at the request of the Commissioner to enjoin alleged violations, seek restitution, and, in accordance with Conn. Gen. Stat. § 42-110o(a) and (b), seek civil penalties.

- B. Our Section supports Section 3 of the bill. Section 3 proposes to amend Conn. Gen. Stat. § 42-110d(f), the confidentiality provision of CUTPA, regarding access via the Freedom of Information Act to information concerning investigations undertaken by the Connecticut Department of Consumer Protection. Our Section believes this is a very good change, because the current provision states, "in no event shall the commissioner withhold any such records longer than a period of eighteen months after the date on which the initial complaint was filed with the commissioner or after the date on which the investigation or examination was commenced, whichever is earlier." The amendment would replace the 18-month rule with language that will permit, but not require, the Commissioner to keep investigative materials confidential until the investigation is closed. The current provision is, and has been, highly problematic because: (a) said language mandates that such investigative files be disclosed; and (b) there has always existed a real risk that confidential information, e.g., trade secrets and/or other commercially sensitive documents, in the possession of the Connecticut Department of Consumer Protection, will be disclosed before the investigation has in fact concluded.
- C. Our Section takes no position on Section 2 of the bill. Section 2 proposes to amend Conn. Gen. Stat. § 51-164n(b) by deleting Conn. Gen. Stat. § 42-230 from that statute.